

NOLAN R. JONES, ESQ. / SBN: 309151
DREYER BABICH BUCCOLA WOOD CAMPORA, LLP
20 Bicentennial Circle
Sacramento, CA 95826
Telephone: (916) 379-3500
Facsimile: (916) 379-3599
DBBWC-ESERVICE@dbbwc.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KENNY DU,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION, ET.
AL.

Defendants.

Case No.: 2:22-CV-00910-JAM-DB

**PLAINTIFF'S MOTION AND NOTICE OF
MOTION FOR LEAVE TO AMEND THE
COMPLAINT AND TO REMAND ACTION TO
STATE COURT**

Hearing Date: Tuesday, August 2, 2022
Time: 1:30 p.m.
Department: Courtroom 6, 14th Floor

Assigned to District Judge John A. Mendez

TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 2, 2022, at 1:30 p.m., or soon thereafter as the parties may be heard, Plaintiff will move this Court, at the United States District Court Eastern District of California located at 501 I Street, Sacramento, California, Courtroom 6, 14th Floor, for a motion for leave to file a First Amended Complaint and to remand the action to state court.

Plaintiffs move this Court for an order under 28 U.S.C. section 1447(e) granting them leave to file the First Amended Complaint. The motion to remand necessarily follows due to a lack of continuing complete diversity. In pre-litigation conversations between Plaintiff's counsel and Costco's Claims Adjusters, Costco claimed that the gasoline which was spilled onto the ground that Plaintiff ultimately slipped and fell upon was spilled by another customer. Although Costco knows the identity of that individual, they were unwilling to

1 provide his or her identity informally and forced Plaintiff to file suit in order to conduct discovery and reveal the
2 person's name. Further, Costco claimed to have video of the subject incident showing that this third party
3 individual caused the event and that Costco did not have proper notice to clean it up; however, such video also
4 was not produced informally and would only be produced via discovery.

5 As such, Plaintiff was forced to file the complaint against Costco in order to find out the information of
6 the party whom Costco believes to be at fault in this incident. Given that this incident took place in Sacramento,
7 California and was caused by a California Costco Member, it is highly likely that the person is a California
8 resident. Plaintiff has propounded discovery to learn the identity of this individual, but Costco has not yet
9 responded to the discovery. Regardless, the court should remand this case to State Court and permit Plaintiff to
10 file an amended complaint to name the allegedly at fault California resident who spilled the gasoline that injured
11 Plaintiff. Additionally, once that individual is added as a Defendant, complete diversity will be destroyed and
12 action will be necessarily remanded to state court.

13 Plaintiffs' request is based upon this Notice of Motion and Motion, the accompanying Memorandum of
14 Points and Authorities, the Declaration of Nolan R. Jones, Esq., and the pleadings and papers on file in this
15 action.

16 DATED: June 27, 2022

DREYER BABICH BUCCOLA WOOD CAMPORA, LLP

/s/ Nolan R. Jones

By: _____
NOLAN R. JONES

PROOF OF SERVICE – FRCP, Rule 5(b)

Du v. Costco Wholesale Corporation, et. al. United States District Court, Eastern District of California
Case No.: 2:22-CV-00910-JAM-DB

I, the undersigned, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action. I am an employee of Dreyer Babich Buccola Wood Campora, LLP and my business address is 20 Bicentennial Circle, Sacramento, CA 95826.

On the date below, I served the within document:

PLAINTIFF'S MOTION AND NOTICE OF MOTION FOR LEAVE TO AMEND THE COMPLAINT AND TO REMAND ACTION TO STATE COURT

On the parties in said action addressed as follows:

Matthew C. Jaime, Esq.
MATHENY SEARS LINKERT & JAIME LLP
3638 American River Drive
Sacramento, CA 95864-5901
Telephone: (916) 978-3434
Facsimile: (916) 978-3430
Email: mjaime@mathenysears.com

Attorneys for Defendant
COSTCO WHOLESALE CORPORATION

cc: rzapardiel@mathenysears.com
rladrido@mathenysears.com
mmezger@mathenysears.com
arios@mathenysears.com

☐ **BY MAIL:** I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Sacramento, CA, addressed as set forth above.

☐ **BY PERSONAL SERVICE:** By personally delivering a true copy thereof to the office of the addressee above.

☒ **BY ELECTRONIC TRANSMISSION:** By CM/ECF Service- I caused such documents to be delivered electronically via CM/ECF at noted herein.

☐ **BY OVERNIGHT COURIER:** By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

☒ **FEDERAL:** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 27, 2022, at Sacramento, CA.

/s/ Melissa Earls
MELISSA EARLS